

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent Application No. 09/835,288

Confirmation No. 4742

Applicant: Beck et al.

Filed: April 13, 2001

TC/AU: 3637

Examiner: CHEN, Jose V.

Docket No.: 265097

Customer No.: 23460

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**PETITION PURSUANT TO 37 C.F.R. §§ 1.137(a) AND 1.137(b) TO REVIVE THE
UNAVOIDABLY OR UNINTENTIONALLY ABANDONED APPLICATION**

Sir:

Petitioner, Herman Miller, Inc., by and through its counsel, hereby petitions under 37 C.F.R. §§ 1.137(a) and 1.137(b) to revive the above-referenced abandoned patent application. The incredible circumstances involved, as described below, warrant a finding that the entire period of delay resulting in the abandonment of the subject patent application and leading to the filing of the present petition was unavoidable or, at the very least, unintentional, leading to the revival and reinstatement of Petitioner's U.S. patent application No. 09/835,288.

Fees

Petition fee - Petition to Revive Abandoned Patent Application (37 C.F.R. § 1.17(l))

Small entity – \$250.00. Petitioner claims small entity status.

- Other than small entity – \$540.00.

Payment of fees

- Please charge Deposit Account No. 12-1216 in the amount of \$540.00.
A duplicate copy of this communication is enclosed for that purpose (unless submitted via EFS-Web).
- A check in the amount of \$ _____ is enclosed.
- Charge Account No. 12-1216 for any additional fee required.

The Commissioner is further authorized to charge any additional fees required to consider the present communication and/or grant the relief requested herein, including fees for the consideration of the present petition under the “unintentional” standard of 37 C.F.R. § 1.137(b) and any extensions of time that may be required. The Commissioner also is authorized to credit any excess payment to Deposit Account No. 12-1216.

A terminal disclaimer under 37 C.F.R. § 1.137(a)(4) or 37 C.F.R. § 1.137(b)(4) is not required as the application was filed after June 8, 1995. A Reply to the last-issued Office Action is included herewith.

Introductory Statement

Petitioner discovered on September 4, 2008, that Petitioner’s former counsel, William F. Prendergast, had engaged in deceptive conduct in connection with several of its patent applications, including the above-referenced patent application and U.S. Patent Application 10/900,551 (see Petition dated December 24, 2008, filed in U.S. Patent Application 10/900,551). Mr. Prendergast’s conduct in at least one of these cases has been reported by Mr. Prendergast’s former law firm, Brinks, Hofer, Gilson & Lione (BHGL), to both the Illinois Attorney Registration and Disciplinary Committee and the Office of Enrollment and Discipline of the U.S. Patent and Trademark Office.

As set forth in detail below, after allowing the present patent application to go abandoned, Mr. Prendergast intentionally concealed the abandoned status of the present application to Petitioner and to his former law firm, BHGL. It was only upon a recent investigation of Mr. Prendergast’s conduct in a different case, referenced above, that the abandoned status of the present case was discovered.

Mr. Prendergast's behavior, conduct, and handling of this application was clearly outside the scope of the agency within which he was authorized to act on behalf of Petitioner, and this behavior and conduct should not inure to Petitioner's detriment. Having recently learned of the circumstances described herein, and after reasonable further inquiry into the facts, Petitioner has acted promptly to rehabilitate the present application by way of the present petition.

Statement of Facts

1. During the period of time from May 2003 until August 2008, Petitioner was represented before the U.S. Patent and Trademark Office with respect to the present application by the law firm of Brinks, Hofer, Gilson & Lione (BHGL) (Ex. A). William F. Prendergast was the BHGL attorney principally involved with the present patent application (Ex. A).
2. On May 14, 2003, the U.S. Patent and Trademark Office issued an Office Action in connection with the present patent application, which was received and docketed by BHGL with a statutory "final" deadline to respond on November 14, 2003 (Ex. A). Petitioner did not receive a copy of the Office Action (Ex. B).
3. Sometime thereafter, Mr. Prendergast submitted a memo to BHGL's docketing department stating that a response to the May 14, 2003, Office Action had been filed along with an appropriate time extension prior to the expiration of the final deadline (Ex. A). BHGL's docketing department extinguished the due date for filing a response to office action as a result of Mr. Prendergast's memo effectively deactivating procedures designed to protect against missing important due dates (Ex. A). However, according to USPTO records, no response to the office action was filed before the statutory deadline.
4. On January 27, 2004, the U.S. Patent and Trademark Office issue a Notice of Abandonment for failure to file a timely reply to the Office Action of May 14, 2003. The notice was received by BHGL and docketed for a petition to be filed within two months (Ex. A). Petitioner did not receive a copy of the Notice of Abandonment (Ex. B).
5. Sometime thereafter, Mr. Prendergast communicated to BHGL's docketing department that a Petition to Revive had been filed in response to the Notice of Abandonment (Ex. A). BHGL's docketing department removed the action from the docketing system as a result of Mr. Prendergast's memo, again deactivating procedures designed to protect against missing important due dates (Ex. A). However, according to USPTO records, no such petition was filed.

6. During the period of time from about May 2003 to about August 2008, quarterly meetings were held between Petitioner and BHGL to review Petitioner's intellectual property matters, which meetings were attended by BHGL's attorneys (Ex. A; Ex. B). As a matter of course, any problems with Petitioner's patent portfolio were to be raised at those meetings, if not beforehand (Ex. A; Ex. B). However, the abandonment of the present application was not brought to Petitioner's attention during these meetings, despite the fact that Mr. Prendergast himself was present during several meetings held after the Notice of Abandonment was issued and received by him (Ex. B).
7. Petitioner also inquired specifically of Mr. Prendergast regarding the present application, but was not informed of the Office Action or the abandoned status of the application (Ex. B).
8. Bills were sent to Petitioner for work done on the present case for many months after the notice of abandonment had issued (Ex. B). Also, docketing reports provided by BHGL's docketing department to Petitioner show the present case as pending (Ex. B; Ex. C).
9. Based upon Petitioner's periodic inquiry as to the status of the present application and information provided to Petitioner by BHGL, Petitioner believed the present application was pending during the entire period from May 2003 to July 2008 (Ex. B).
10. On March 31, 2008, Petitioner asked BHGL to report the status of an unrelated patent application. This inquiry prompted an internal investigation of Mr. Prendergast's cases, and ultimately led to the discovery that several patent applications, including the present patent application, had gone abandoned without Petitioner's knowledge (see Petition filed on December 24, 2008, in connection with Petitioner's U.S. Patent Application No. 10/900,551).
11. On June 19, 2008, Mr. Prendergast filed a memo with BHGL's docketing department alleging that Petitioner instructed abandonment of the present application (Ex. A). Petitioner never gave instructions to abandon the case (Ex. B).
12. An e-mail from BHGL to Petitioner dated July 17, 2008, provided the status of several of Petitioner's patent applications (Ex. D). This e-mail is the first correspondence from BHGL showing the present application as being abandoned.
13. In a telephone call on August 21, 2008, and subsequent letter dated August 24, 2008, BHGL informed Petitioner that Mr. Prendergast was no longer with BHGL and that

several of Petitioner's patent applications being handled by Mr. Prendergast, including the present patent application, had gone abandoned (Ex. A). Petitioner immediately facilitated transfer of the cases to new counsel.

14. On September 4, 2008, BHGL informed Petitioner that an investigation of the contents of Mr. Prendergast's office and files indicated that Mr. Prendergast falsified documents submitted to the patent office in several cases unrelated to the present case (Ex. E; see, also, Petition filed on December 24, 2008, in connection with Petitioner's U.S. Patent Application No. 10/900,551). Further investigation into BHGL's records over the following weeks provided the additional evidence of Mr. Prendergast's activities that forms the basis for this petition.
15. The investigation of Mr. Prendergast's activities is ongoing, and Mr. Prendergast's former law firm, BHGL, has since reported these acts to the Illinois Attorney Registration and Disciplinary Committee and the Office of Enrollment and Discipline of the U.S. Patent and Trademark Office.
16. Petitioner's new counsel contacted Mr. Prendergast's personal representative via telephone on October 30, 2008 and via letter on November 4, 2008, in order to provide Mr. Prendergast with the opportunity to discuss the matters described herein. To date, Mr. Prendergast has not responded.

Discussion

To revive an abandoned patent application under 37 C.F.R. § 1.137(a), the petitioner must establish that his application became abandoned due to "unavoidable delay." Decisions considering whether a delay was "unavoidable" rely on the standard of the "reasonably prudent person" taking into consideration the extent of diligence exhibited by the petitioner in connection with the delay for which the application became abandoned and the petitioner's efforts to revive the abandoned application. Under this standard, "unavoidable" delay requires no more diligence than is generally used by prudent men in relation to their most important business, and permits reliance on worthy and reliable employees. *In re Mattullath*, 38 App.D.C. 497 (C.A.D.C. 1912). Thus, if there is prompt rectification, an unexpected or unforeseen fault or imperfection in that which is relied upon is considered unavoidable. *Id.*

Under ordinary circumstances, the diligence of the petitioners' attorney is relevant because one is ordinarily bound by the acts of his attorney. *Link v. Wabash R.R.*, 370 U.S. 626, 633-34, reh'g denied, 371 U.S. 873 (1962). However, when an attorney intentionally conceals a mistake he has made, thus depriving the client of a viable opportunity to cure the consequences of the attorney's error, the situation is not governed by the stated rule in *Link* for charging the attorney's mistake to his client. *In re Lonardo*, 17 USPQ2d 1455, 1457-58 (USPTO Commissioner of Patents, 1990) (citing *Jackson v. Washington Monthly Co.*, 569 F.2d 119, 122 n.18 (D.C. Cir. 1977)). Thus, where a patent attorney intentionally concealed the abandoned status of a patent application from his client, the Commissioner refused to allow the attorney's acts to inure to the detriment of the client. *In re Lonardo*, 17 USPQ2d at 1459.

In the present case, Petitioner exercised all reasonable prudence in protecting its rights. To prosecute the present patent application, Petitioner engaged a nationally recognized law firm that specializes in intellectual property law and maintains procedures to ensure that deadlines would not be missed. Petitioner, therefore, reasonably trusted their attorneys to act appropriately with respect to its pending patent applications. Furthermore, Petitioner was diligent in inquiring of its attorneys as to the status of the present application. Indeed, it was Petitioner's inquiry that ultimately uncovered the conduct and issues raised in this petition, and for which relief is now sought.

Had it not been for Mr. Prendergast's deliberately deceptive acts, the present application would not have gone abandoned or, at the very least, would have been rectified immediately following abandonment. Mr. Prendergast did not simply fail to notify Petitioner that an Office Action was outstanding, in which case some action would have been taken before the statutory deadline leading to abandonment. Instead, Mr. Prendergast intentionally deceived his law firm by telling the docketing department that he had filed a response to the office action several days before the statutory deadline. Mr. Prendergast's actions effectively "derailed" procedures at BHGL designed to ensure the protection of Petitioner's rights, and concealed the true facts from the Petitioner.

Thereafter, Mr. Prendergast continued to engage in activity designed to hide the abandoned status of the case from his law firm and from Petitioner. After a Notice of Abandonment was issued and docketed by Petitioner's law firm, Mr. Prendergast told his law firm that he had filed a petition to withdraw the holding of abandonment when, in fact, no such petition had been filed. As a result, BHGL maintained a record of the case as pending with no action due during the relevant time period up to at least until June 19, 2008, when Mr.

Prendergast filed another memo with BHGL's docketing system advising them of the abandonment of the case on the basis of client instructions that were never given. During regular meetings with Petitioner, Mr. Prendergast failed to reveal his knowledge that the present application had gone abandoned, and even billed Petitioner for work done on the present application after the Notice of Abandonment had been received, further indicating to the Petitioner that the case was pending.

As a result of Mr. Prendergast's behavior, Petitioner's regular meetings and periodic inquiries of its patent applications failed to reveal the abandoned status of the application. To the contrary, all indications led to the reasonable belief that the present application was pending during the relevant period of time.

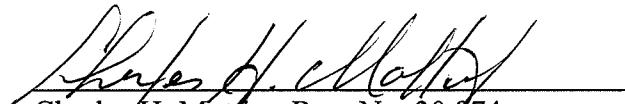
Petitioner was formally apprised by BHGL of problems with Petitioner's patent applications handled by Mr. Prendergast in late-August, 2008, at which time Petitioner promptly obtained new counsel. Shortly thereafter, events unfolded that warranted further diligent inquiry into the facts and circumstances of this and other of Petitioner's cases handled by Mr. Prendergast. Specifically, it was revealed to Petitioner on September 4, 2008, that Mr. Prendergast's deceptive conduct extended not only to his own clients and law partners, but also to submissions at the U.S. Patent and Trademark Office in other of Petitioner's patent applications. The evidence discovered and provided to Petitioner over the period of late-August through mid-October 2008 forms the basis of the present petition.

Under the rule of law set forth in *In re Lonardo*, Mr. Prendergast's deliberately deceptive acts are not attributable to Petitioner. Petitioner should not, therefore, be held to a standard requiring it to correct defects caused by counsel, of which it was unaware, at the time they occurred. Until the true status of the present application was revealed to Petitioner on or around July 17, 2008, and despite reasonable care and diligence, Petitioner reasonably believed that the present application was pending and free of any defects. Even after being made aware of the abandoned status of the present application, the circumstances surrounding the abandonment were not made clear until only very recently, again due to the intentional misconduct of Mr. Prendergast. Any delay that resulted in the abandonment of the present application and the subsequent filing of this petition was, therefore, caused by Mr. Prendergast's deliberately deceptive acts and should, for this reason, be considered unavoidable. Accordingly, Petitioner requests revival of the present application on this basis.

As an alternative basis for relief, Petitioner submits that the foregoing circumstances demonstrate, at a minimum, that the entire period of delay leading up to the abandonment and subsequently to the filing of the present petition was unintentional under 37 C.F.R. § 1.137(b). Accordingly, and in the alternative, Petitioner requests that this petition to revive the application be granted on these other grounds.

The U.S. Patent and Trademark Office is encouraged to telephone the Petitioner's undersigned representative if there are any questions or remaining issues concerning Petitioners' revival of the subject patent application.

Respectfully submitted,



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Date: December 24, 2008

Exhibit A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent Application No. 09/835,288

Confirmation No. 4742

Applicant: Beck et al.

Filed: April 13, 2001

TC/AU: 3637

Examiner: CHEN, Jose V.

Docket No.: 265097

Customer No.: 23460

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**STATEMENT OF ANDREW STOVER, ESQ., IN SUPPORT OF PETITION PURSUANT
TO 37 C.F.R. §§ 1.137(a) AND 1.137(b) TO REVIVE THE UNINTENTIONALLY OR
UNAVOIDABLY ABANDONED APPLICATION**

I, Andrew Stover, hereby declare the following:

1. I am a shareholder at the law firm of Brinks, Hofer, Gilson & Lione (BHGL), and have been a shareholder at BHGL since before May 2003.

2. During the period of time from about May 2003 until about August 2008, BHGL represented Petitioner Herman Miller, Inc., with respect to many patent applications, including the above-referenced patent application. During this time, William F. Prendergast of BHGL was principally involved with supervising the prosecution of the above-referenced patent application before the U.S. Patent and Trademark Office. Mr. Prendergast also was a shareholder with BHGL at the time. As of August 2008, Mr. Prendergast is no longer with BHGL.

3. In connection with its representation of Petitioner, BHGL's docketing department maintained a docket of Petitioner's patent applications. The docket included status information as well as due dates and reminders for actions required to be taken with respect to Petitioner's patent applications.

4. During the period from May 2003 to August 2008, BHGL's docketing department followed procedures designed to prevent important reminders and due dates from being

overlooked. For instance, as an important due date on any given matter would draw near, BHGL's docketing department would remind the attorney in charge of the matter of the need to take appropriate action and to notify docketing when the action had been completed. When the docketing department was notified that an appropriate action had been taken, the due date or reminder would be extinguished. However, if the docketing department was not notified that an appropriate action had been taken, the matter would be escalated within the firm to one or more shareholders designated to supervise the firm's docketing functions, who would ensure that appropriate action was taken before the due date expired. Such procedures would have applied, for example, to a docketed statutory due date to reply to an office action.

5. In connection with the above-referenced patent application, BHGL received an Office Action with a mailing date of May 14, 2003 (Ex. 1). Accordingly, BHGL's docketing department docketed the statutory deadline for filing a response to the Office Action for November 14, 2003, as shown by a screen shot of BHGL's docketing system notes provided herewith (Ex. 2). A search of BHGL's records revealed a memo that was submitted to BHGL's docketing department, and signed by Mr. Prendergast, indicating that a response to the Office Action along with a request for time extension was filed on November 13, 2003 (Ex. 3). BHGL's docketing department extinguished the due date for filing the response on the basis of Mr. Prendergast's memo.

6. Subsequently, BHGL received a Notice of Abandonment in the above-referenced patent application with a mailing date of January 27, 2004 (Ex. 4). Accordingly, BHGL's docketing department docketed several reminders for filing a petition in response to the Notice of Abandonment (Ex. 2). BHGL's docketing system notes indicate that Mr. Prendergast told BHGL's docketing department that a petition had been filed in response to the notice of abandonment (Ex. 2). It is believed that BHGL's docketing system extinguished the reminders on the basis of Mr. Prendergast's instructions.

7. It is believed that, as a result of Mr. Prendergast's submissions to BHGL's docketing department, the present application was shown as "pending" in BHGL's docketing system until sometime after June 19, 2008, at which time Mr. Prendergast informed the docketing department that the case should be closed (Ex. 5). Accordingly, any information regarding the status of the present patent application provided to Petitioner during the period of time up to at least June 19, 2008, would also have shown the present patent application as "pending."

8. Petitioner held quarterly meetings with BHGL attorneys during the period of time from May 2003 to August 2008 to discuss various matters relating to Petitioner's intellectual property, including any important changes to the status of Petitioner's patent portfolio. I personally attended many such meetings throughout this period of time. Mr. Prendergast also attended some of these meetings. Had I been aware of any problems with the above-referenced patent application that had not already been brought to Petitioner's attention, I would have brought such problems to Petitioner's attention during one of these meetings if not before. I would have expected other BHGL attorneys to do the same. To the best of my recollection, the abandonment of the present application was not raised at any of the quarterly meetings. As far as I am aware, the first communication from BHGL to Petitioner that showed the abandoned status

of the above application was an e-mail on July 17, 2008 that provided, at Petitioner's request, the status of several of its patent applications including the above-referenced patent application.

12. Mr. Prendergast's employment with BHGL was suspended on August 8, 2008, and terminated on August 14, 2008. Shortly thereafter, on August 21, 2008, I notified Petitioner via telephone that several of its patent applications had been abandoned without their knowledge. This telephone call was followed by a letter, dated August 24, 2008, identifying the patent applications that had been abandoned, including the present application.

9. I hereby declare that all statements made herein of my own knowledge are true, that all statements made on information and belief are believed to be true, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date: 12/17/08



Andrew Stover, Esq.
Brinks, Hofer, Gilson & Lione

Exhibit A-1



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
P.O. Box 1430
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/835,288	04/13/2001	Robert L. Beck	3591/1102	4742

7590 05/14/2003
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CHICAGO, IL 60610

[REDACTED] EXAMINER

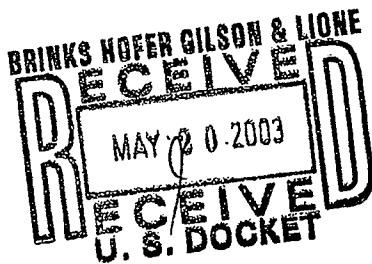
CHEN, JOSE V

[REDACTED] ART UNIT [REDACTED] PAPER NUMBER

3637

DATE MAILED: 05/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.



Office Action Summary	Application No.	Applicant(s)
	09/835,288	BECK ET AL.
	Examiner José V. Chen	Art Unit 3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 10 February 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-79 is/are pending in the application.
- 4a) Of the above claim(s) 7,43-50 and 64-79 is/are withdrawn from consideration.
- 5) Claim(s) 35-37 is/are allowed.
- 6) Claim(s) 1-6,8-10,18-34,38-42 and 51-63 is/are rejected.
- 7) Claim(s) 11-17 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>5,6</u> . | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Election/Restrictions

Applicant's election of figs. 1-12, 34-39, 40-43, 44, 47-50, claims 1-6, 8-42, 51-63 in Paper No. 9 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 38-42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 38 is indefinite in that it depends from itself. Claims 39-42 are indefinite in that they depend from an indefinite base claim. Clarification and correction are required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Newhouse ('873). The patent to Newhouse ('873) teaches structure as claimed including a framework formed from a plurality of poles(fig. 1) and crossbeams capable

of being arranged in a plurality of non linear patterns, some of the poles adapted to provide a raceway.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 2, 3, 4, 5, 6, 9, 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Newhouse ('873). The patent to Newhouse ('873) teaches structure substantially as claimed as discussed above including poles, the poles arranged at various angles, the only difference being the exact angle of arrangement. However, the use of different angles are matters of desirability and choice and would have been and well within the level of ordinary skill in the art at the time of the invention to provide different angles for design and ergonomics, thereby providing structure as claimed.

Claims 18,-27, 29-34, 51-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Newhouse ('873) as applied to the claims above, and further in view of Fox et al.

The patent to Newhouse ('873) teaches structure substantially as claimed as discussed above including crossbeams, the only difference being that the crossbeams do not include raceways for cabling.. However, the patent to Fox et al(at106) teaches the use of providing raceways in crossbeams for cabling to be old. It would have been obvious and well within the level of ordinary skill in the art at the time of the invention was made to modify the structure of Newhouse ('873) to include crossbeams with raceways for cabling, as taught by Fox et al since such structures are conventional alternative structural components thereby providing structure as claimed. The use of floor mats and cantilever type supports for shelving are well known and would have been obvious and well within the level of ordinary skill in the art depending on the features desired for the workstations.

Information Disclosure Statement

The information disclosure statement filed 08-12-02 (with respect to the non US patents) fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

Allowable Subject Matter

Claims 11-17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 35-37 are allowable over the prior art of record.

Claims 38-42 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Gresham et al, van Gelder et al, Vander Park, Rein et al, Gioacchini et al, Funk et al, Ostertag et al, Catta et al, Scharer et al, 4-193205 teach structure similar to applicant's.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to José V. Chen whose telephone number is (703) 308-3229. The examiner can normally be reached on m-f,m-th 5:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (703)308-2168. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9326 for regular communications and (703)872-9327 for After Final communications.

Application/Control Number: 09/835,288
Art Unit: 3637

Page 6

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-2168.

José V. Chen
Primary Examiner
Art Unit 3637

Chen/jvc
May 12, 2003

Exhibit A-2

Exhibit A-3

TO DOCKET CLERK

CHECKED:

NOTICE OF MAILING TO PATENT OFFICE

APPLICANT:	Bechta, J.		
CLIENT/MATTER NO.:	35911102		
ITEM(S) MAILED:	Affidavit re Key to Ext. of Trad		
DATE DUE:	11/16/03		
DATE OF MAILING:	11/16/03		
CHECK IF EXPRESS MAIL: <input type="checkbox"/> Express Mail Label Number			
MEMO TO: SECY INTL			
ATTORNEY/SECRETARY <i>[Signature]</i>			

Exhibit A-4

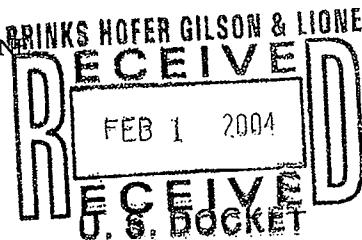


UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/835,288	04/13/2001	Robert L. Beck	3591/1102	4742

7590 01/27/2004
BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO, IL 60610



EXAMINER	
CHEN, JOSE V	

ART UNIT	PAPER NUMBER
3637	

DATE MAILED: 01/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

SL

Notice of Abandonment	Application No.	Applicant(s)
	09/835,288	BECK ET AL.
	Examiner José V. Chen	Art Unit 3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. Applicant's failure to timely file a proper reply to the Office letter mailed on 14 May 2003.
 - (a) A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) No reply has been received.
2. Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) The submitted fee of \$ _____ is insufficient. A balance of \$ _____ is due.
The issue fee required by 37 CFR 1.18 is \$ _____. The publication fee, if required by 37 CFR 1.18(d), is \$ _____.
(c) The issue fee and publication fee, if applicable, has not been received.
3. Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) No corrected drawings have been received.
4. The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. The reason(s) below:

José V. Chen
Primary Examiner
Art Unit: 3637

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

Exhibit A-5

MEMORANDUM

TO: U.S. Docket Dept.
[If closing matter in Acctg, select Acctg Dept.]
[If closing matter in Acctg, select Records Dept.]

FROM: WFP

DATE: June 19, 2008

RE: Abandon/Close Authorization

BRINKS
HOFER
GILSON
& LIONE

Please Abandon/Close the following matter:

Client/Matter No: 3591/1005, 3591/1102
Client Name: HMI
Matter Name: Work Space Management Systems

If applicable, this client/matter no. has been abandoned/closed in favor of:
client/matter no.

This matter is being closed for the following reason:

- Client instructions (letter or email attached or in file)
 File being transferred (letter or email attached or in file)
 Lack of client instructions (letter(s) or email(s) attached or in file)
 Other: _____

This file is a:

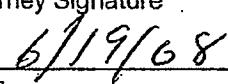
- Prosecution Case
 Litigation Case
 Other

Accounting System: Unless checked, this matter will only be closed in the docket system.

- Close this matter in Accounting (copy to Accounting if checked)
Accounting: Please close matter 60 days after date of signature



Attorney Signature



Date

Note: It is the attorney's responsibility to obtain a letter from the client or send a confirming letter to the client concerning these instructions.

Exhibit B

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent Application No. 09/835,288

Confirmation No. 4742

Applicant: Beck et al.

Filed: April 13, 2001

TC/AU: 3637

Examiner: CHEN, Jose V.

Docket No.: 265097

Customer No.: 23460

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**STATEMENT OF GEORGE SEAY IN SUPPORT OF PETITION PURSUANT TO 37
C.F.R. §§ 1.137(a) AND 1.137(b) TO REVIVE THE UNINTENTIONALLY OR
UNAVOIDABLY ABANDONED APPLICATION**

I, George Seay, hereby declare the following:

1. During the period of time from about May 2003 until about August 2008, I was employed by Herman Miller, Inc., as Manager of Liability & IP Legal Services. In this position, I served as the principal contact person to Brinks, Hofer, Gilson, & Lione (BHGL) with respect to the above-referenced patent application. Moreover, as the principal contact person with BHGL, I would have been informed of the substance of any communications between BHGL and another Herman Miller employee, either by BHGL or by the other Herman Miller employee.

2. It is my understanding that the U.S. Patent and Trademark Office issued an Office Action dated May 14, 2003, and, subsequently, a Notice of Abandonment dated January 27, 2004, in connection with the above case. I have no recollection of being notified of the existence of either of these documents prior to the investigation that led to the present petition. Furthermore, after reasonable investigation of the current files, no record was found indicating that the Office Action or Notice of Abandonment was received by Herman Miller after October 5, 2005.

3. Herman Miller has used BHGL's services with respect to patent prosecution for many years. Quarterly, I would meet or confer by telephone with attorneys from BHGL to discuss our patent portfolio. During these meetings, BHGL would provide updates as to the status of Herman Miller's pending applications. If problems arose with respect to any patent application, those problems would be discussed at one of these meetings.

4. A review of our records indicates that Mr. Prendergast was present for at least nine of the quarterly meetings held after May 14, 2003, i.e., the date the above referenced Office Action issued. Seven of the nine meetings were held after January 27, 2004, i.e., the date the above-referenced Notice of Abandonment issued. To the best of my knowledge, and after a reasonable review of the relevant files, BHGL did not indicate during any of these meetings that an Office Action had issued or that the above-referenced patent application was abandoned.

5. Aside from the quarterly meetings with BHGL, I conferred with Mr. Prendergast, typically by telephone, on many occasions during the period of time from May 2003 to August 2008 regarding Herman Miller's pending patent applications. The above-referenced patent application is one such application that I would have inquired about during these conversations. Mr. Prendergast never mentioned the abandoned status of this application. Although most of these conversations occurred via telephone, I discovered an e-mail to Mr. Prendergast dated October 5, 2005, specifically inquiring of the status of this application and informing him that no actions had been received by Herman Miller on the case (Ex. 1).

6. I received bills for work done by Mr. Prendergast on the above-referenced application long after January 2004 (Ex. 2). Also, reports requested from BHGL's docketing system as to expired patent rights did not show the above-referenced patent application (Ex. 3). Such information indicated to me that the application was pending.

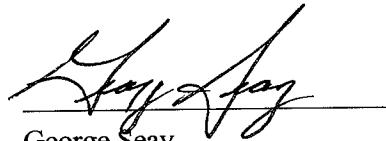
7. Furthermore, to the best of my knowledge, Herman Miller did not at any time instruct BHGL to abandon the above-referenced patent application. If Herman Miller had so instructed BHGL, the patent application number would have been removed from Herman Miller's capitalization records as a matter of routine procedure. As of about May 2008, the above-referenced patent application remained on Herman Miller's capitalization records. Accordingly, I held the belief that the above-referenced patent application was pending until we were notified of the abandoned status of the application in about July or August, 2008. Given the foregoing, I can only conclude that others at Herman Miller similarly held the belief that the present application was pending during this time period.

8. I hereby declare that all statements made herein of my own knowledge are true, that all statements made on information and belief are believed to be true, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both, under Section 1001 of Title 18 of the United States Code, and

U.S. Patent Application No. 09/835,288

that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date: 10 December 2008



George Seay

Manager, Liability & IP Legal Services
Herman Miller, Inc.

Exhibit B-1

Prendergast, William

From: George Seay [george_seay@hermanmiller.com]
Sent: Wednesday, October 05, 2005 10:39 AM
To: Prendergast, William
Subject: Status of the US Resolve Application ??? (BHGL No. 3591-548)

Bill

What is the status of the US Resolve application? 3591-548 was filed in 1998 and I believed was nationalized under 3591-1102 in the US. I do not recall having seen any Office Actions on this matter.

George Seay
Mgr. Liability & Intellectual Property
Herman Miller, Inc. (loc. 0440)
P.O. Box 302
855 East Main Street
Zeeland, MI 49464-0302
616-654-3514 phone
616-654-7218 fax

Exhibit B-2

BRINKS HOFER GILSON & LIONE
INVOICE NUMBER 238342
JULY 20, 2004

HMI PATENT PROSECUTION & EVALUATION LEADING TO PROSECUTION (Z99401)

Re: 1102 WORK SPACE MANAGEMENT AND FURNITURE SYSTEM
-- ROBERT L. BECK, ET AL. --
SERIAL NO. 09/835,288 (CONTINUATION OF
PCT APPLN. NO. US99/23793 -- 3591/881)

SERVICES

JUN 07 04 WF PRENDERGAST DRAFTING CLAIMS;

TOTAL HOURS [REDACTED]

WF PRENDERGAST [REDACTED] HRS AT \$[REDACTED] = 1,140.00

TOTAL SERVICES 1,038.76

TOTAL THIS MATTER 1,038.76

BRINKS HOFER GILSON & LIONE
INVOICE NUMBER 245814
OCTOBER 20, 2004

HMI PATENT PROSECUTION & EVALUATION LEADING TO PROSECUTION (Z99401)

Re: 1102 WORK SPACE MANAGEMENT AND FURNITURE SYSTEM
-- ROBERT L. BECK, ET AL. --
SERIAL NO. 09/835,288 (CONTINUATION OF
PCT APPLN. NO. US99/23793 -- 3591/881)

SERVICES

SEP 01 04	AL SALASCHE	PREPARING INFORMATION DISCLOSURE STATEMENT;	[REDACTED]
SEP 21 04	AL SALASCHE	PREPARING INFORMATION DISCLOSURE STATEMENT;	[REDACTED]

TOTAL HOURS [REDACTED]

AL SALASCHE	[REDACTED] HRS AT \$[REDACTED] = 225.00
-------------	---

TOTAL SERVICES	213.75
TOTAL THIS MATTER	213.75

BRINKS HOFER GILSON & LIONE
INVOICE NUMBER 250266
DECEMBER 20, 2004

Re: 1071 INDIA - WORK SPACE MANAGEMENT AND FURNITURE
SYSTEM

SERVICES

NOV 05 04 WF PRENDERGAST REVIEWING PATENT OFFICE CORRESPONDENCE;

TOTAL HOURS [REDACTED]

WF PRENDERGAST [REDACTED] HRS AT \$[REDACTED] = 570.00

TOTAL SERVICES [REDACTED] 500.72

TOTAL THIS MATTER [REDACTED] 500.72

Re: 1102 WORK SPACE MANAGEMENT AND FURNITURE SYSTEM
-- ROBERT L. BECK, ET AL. --
SERIAL NO. 09/835,288 (CONTINUATION OF
PCT APPLN. NO. US99/23793 -- 3591/881)

SERVICES

NOV 23 04 WF PRENDERGAST REVIEWING CORRESPONDENCE FROM PATENT OFFICE;

TOTAL HOURS [REDACTED]

BRINKS HOFER GILSON & LIONE
INVOICE NUMBER 251774
JANUARY 20, 2005

TOTAL DISBURSEMENTS	485.20
TOTAL THIS MATTER	485.20

Re: 1075 MEXICO - WORK SPACE MANAGEMENT AND FURNITURE
SYSTEM

DISBURSEMENTS

OUR OWN AND OUR ASSOCIATE'S CHARGE FOR SERVICES AND DISBURSEMENTS IN CONNECTION WITH REPORTING OFFICE ACTION

TOTAL DISBURSEMENTS	575.00
TOTAL THIS MATTER	575.00

Re: 1102 WORK SPACE MANAGEMENT AND FURNITURE SYSTEM
-- ROBERT L. BECK, ET AL. --
SERIAL NO. 09/835,288 (CONTINUATION OF
PCT APPLN. NO. US99/23793 -- 3591/881)

SERVICES

DEC 16 04 WF PRENDERGAST REVIEWING CORRESPONDENCE FROM FOREIGN
ASSOCIATE;

TOTAL HOURS [REDACTED]

WF PRENDERGAST [REDACTED] HRS AT \$[REDACTED] = 570.00

TOTAL SERVICES	570.00
TOTAL THIS MATTER	570.00

Re: 1210 NT PANEL SYSTEM FOR HERMAN MILLER

Exhibit B-3

From: George Seay [mailto:george_seay@hermanmiller.com]
Sent: Friday, August 17, 2007 1:25 PM
To: Stover, Andrew
Cc: Parker, Kathy; Rolla, Mark
Subject: Request for Expired or Abandoned Patents

Drew

Could you send me a list of US and Foreign patents that have gone abandoned or expired during the three month period from May 1, 2007 through July 31, 2007? This would be for all the company numbers you have listed for Herman Miller which I believe are [REDACTED]. I would like to have this by next Friday, August 24 if possible. Thank you...

George Seay
Development Sourcing Manager
Supply Management
Herman Miller, Inc. (loc. 0441)
P.O. Box 302
855 East Main Street
Zeeland, MI 49464-0302
616-654-3514 phone
616-638-8115 cell
616-654-7218 fax

LMI Abandoned/Expired Through Period 5/1/2007 - 7/31/2007						
Docket Number	Expiration Date	Title	Patent Number	Application Number	Country Name	Status
11254-35	6/10/2007	n/a	n/a	60/812,344	United States	Expired
3591-902	6/15/2007	n/a	2027194	2027194	Malaysia	Expired
3591-1361	n/a	7/30/2007 WORKSPACE HABITAT	n/a	10/853,365	United States	Abandoned

DocketNumber	ExpirationDate	Title	PatentNumber	IssueDate	CountryName
3591-276	3/28/2007	SEAT AND BACK UNIT FOR A CHAIR	50690	4/25/1996	Taiwan
3591-365	3/28/2007	SEAT AND BACK UNIT FOR A CHAIR	52007	7/24/1996	Taiwan
3591-366	3/28/2007	SEAT AND BACK UNIT FOR A CHAIR	52021	7/26/1996	Taiwan
3591-367	3/28/2007	SEAT AND BACK UNIT FOR A CHAIR	52022	7/26/1996	Taiwan
3591-368	3/28/2007	SEAT AND BACK UNIT FOR A CHAIR	51972	7/23/1996	Taiwan

Expired
 1/28/07 → 4/28/07

Herman Miller Abandoned Cases

Docket No.	Title	Patent No.	Issue Date	Court/Country Name	Remarks
3591-1058	GRAPHICAL USER INTERFACE AND METHOD FOR INTERFACING WITH A CONFIGURATION SYSTEM FOR HIGHLY CONFIGURABLE PRODUCTS			United States	no foreign filing per client/jlk 11/19/04: NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY ABANDONED PER CLIENT 10/30/2006
3591-1359	FURNITURE SYSTEM			Canada	OUT OF PCT 3591-1235 (PCT/US02/19191) BASED ON US CASE 3591-1108 (SERIAL NO. 60/298,361) updated annu card w/ serial no -ut ABANDONED PER WFP MEMO DATED 10/25/2006
3591-1383	FLEXIBLE TILE WALL SYSTEM			United States	Based on 3591-1316, Serial No. 60/475,122 FILED 5/30/03 IDS Memo Sent Without File 6/28/2004 NO FOREIGN FILING PER CLIENT 1/27/2005: 1 REPLACEMENT DRAWINGS FILED; p/c rec'd 1/31/05. 10/31/2006-abandoned per client MAT

Abandonment
(1/28/07 → 4/28/07)

Expired Patents

DocketNumber	ExpirationDate	Title	PatentNumber	IssueDate	CountryName
11254-29	10/29/2006	METHOD AND APPARATUS FOR SPEECH DISRUPTION			United States
3591-798	10/31/2006	WORK SPACE MANAGEMENT SYSTEM	4,876,835	10/31/1989	United States
3591-1475	1/6/2007	CHAIR WITH ADJUSTABLE FOOT SUPPORT			United States

DocketNumber	ExpirationDate	Title	PatentNumber	IssueDate	CountryName
3591-295	6/15/2005	ARMREST (DESIGN)	76627	6/15/1995	Canada
11254-22	6/28/2005	SEAT WITH ADJUSTABLE SUPPORT SYSTEM			United States
3591-1351	8/5/2005	PIXELATED SUPPORT STRUCTURES AND ELEMENTS			United States
3591-129	9/4/2005	OFFICE CHAIR	171368	7/26/2001	Taiwan
3591-499	9/4/2005	OFFICE CHAIR	165837	4/4/2001	Taiwan
3591-500	9/4/2005	OFFICE CHAIR	166429	4/18/2001	Taiwan
3591-294	9/11/2005	WORK SURFACE SUPPORT (DESIGN)	134162	9/11/1995	Spain
5280-18	10/5/2005	CHAIR (DESIGN)	77299	10/5/1995	Canada
5280-21	10/5/2005	CHAIR (DESIGN)	77300	10/5/1995	Canada
3591-910	10/31/2005	SUPPORT ASSEMBLY	6,308,922	10/30/2001	United States
3591-288	12/7/2005	WORK SURFACE SUPPORT (DESIGN)	77691	12/7/1995	Canada
3591-301	12/14/2005	CHAIR (DESIGN)	77739	12/14/1995	Canada
3591-307	12/14/2005	BACKREST (DESIGN)	77740	12/14/1995	Canada
4635-4	12/28/2005	DESK WITH CABLE MANAGEMENT	5,272,988	12/28/1993	United States
11254-20	1/10/2006	METHOD AND APPARATUS FOR SPEECH MASKING			United States
3591-1420	1/26/2006	COMPUTER WORKSTATION WITH MOVABLE MONITOR SUPPORT			United States
3591-273	2/15/2006	SEAT AND BACK UNIT FOR A CHAIR	175977	2/15/1996	South Korea
3591-329	2/15/2006	SEAT AND BACK UNIT FOR A CHAIR	175978	2/15/1996	South Korea
3591-330	2/15/2006	SEAT AND BACK UNIT FOR A CHAIR	175978-1	4/3/1996	South Korea
3591-331	2/15/2006	SEAT AND BACK UNIT FOR A CHAIR	175978-2	4/3/1996	South Korea

6/1/05 → 4/30/06

Herman Miller Closed Matters

<u>CLIENT</u>	<u>MATTER</u>	<u>SORT CODE</u>	<u>CLOSE DATE</u>	<u>LONG MATTER NAME</u>
03591	00002	1	9/30/1990	HAWORTH INC. V. HERMAN MILLER INC. PATENT LITIGATION
03591	00206	1	1/4/1994	PATENTABILITY AND RIGHT-TO-USE OPINION RE ADJUSTABLE ARMREST
03591	00233	1	3/31/1994	--/---,---
03591	00660	5	5/28/1998	PATENT - WIRE MANAGEMENT SYSTEM - SCHUELKE ET AL.- SERIAL NO. --/---,---
03591	00590	1	7/28/1998	CANADA - FOLD-OUT OFFICE FURNITURE
03591	00694		7/30/1998	PATENT - WOVEN FABRIC MEMBRANE FOR A SEATING SURFACE
03591	00551	4	8/11/1998	FRANCE - FLIPPER DOOR
03591	00773	1	4/20/1999	CLAM SHELL SEAT SUPPORT
03591	00785	4	5/10/1999	AUSTRALIA - PATENT - ADJUSTABLE WORKSURFACE (U.S. CASE 3591/456)
03591	00786	4	5/10/1999	CANADA - PATENT - ADJUSTABLE WORKSURFACE (U.S. CASE 3591/456)
03591	00787	4	5/10/1999	EPO - PATENT - ADJUSTABLE WORKSURFACE (U.S. CASE 3591/456)
03591	00788	4	5/10/1999	JAPAN - PATENT - ADJUSTABLE WORKSURFACE (U.S. CASE 3591/456)
03591	00789	4	5/10/1999	MEXICO - PATENT - ADJUSTABLE WORKSURFACE (U.S. CASE 3591/456)
03591	00790	4	5/10/1999	TURKEY - PATENT - ADJUSTABLE WORKSURFACE (U.S. CASE 3591/456)
03591	00280	1	6/24/1999	PATENT APPLICATION FOR HEIGHT ADJUSTABLE ARMRESTS
				PATENT APPLICATION - PEBBLE TABLE [NAME SUBJECT TO CHANGE] - [INVENTORS]
03591	00653	1	6/24/1999	TO BE NAMED] - SERIAL NO. --/---,---
03591	00661	1	6/24/1999	PATENTS TO BE NAMED - SERIAL NO. --/---,---
				PATENTS TO BE NAMED] - SERIAL NO. --/---,---
03591	00692	1	6/24/1999	ADJUSTABLE WORK SURFACE - PAUL DAME AND ERIC CHAN SERIAL NO. --/---,---
03591	00828	1	7/16/1999	(BASED ON PROVISIONAL SERIAL NO. 60/087,527 - 3591/456)
03591	00397	4	9/14/1999	CONFIGURATION APPLICATION FOR THE AERON CHAIR IN JAPAN
03591	00405	4	9/14/1999	CONFIGURATION APPLICATION FOR THE EAMES LOUNGE CHAIR IN JAPAN
03591	00795	1	9/27/1999	CLOSED PER WFP SELF-LOCKING BAR
				PATENT - WORK SPACE MANAGEMENT AND FURNITURE SYSTEM - ROBERT L.
				BECK, AYSE BIRSEL, ANDREW J. KURRESCHE, ROBERT OREN AND HENRY A.
				THENIKL - SERIAL NO--- (CONTINUATION OF PROVISIONAL SERIAL NO.
03591	00848	1	11/22/1999	60/104,101,3591/548)
				WORK SPACE MANAGEMENT AND FURNITURE SYSTEM -- ROBERT L. BECK, SYSE
				BIRSEL, ANDREW J. KURRESCHE, ROBERT OREN AND HENRY A. THENIKL -- SERIAL
03591	00878	1	11/22/1999	NO. --/---,--- (BASED ON PROVISIONAL SERIAL NO. 60/104,101 - 3591/548)

ADJUSTABLE PARTITION ASSEMBLY - GEORGE MILES AND ERIC CHAN - SERIAL
7/31/2000 NO. --/-,--- (CONTINUATION OF SERIAL NO. 09/320,958 - CASE NO. 3591/834)
11/10/2000 MEXICO - STORAGE DEVICE (BASED ON U.S. CASE 3591/802)
11/10/2000 TURKEY - STORAGE DEVICE (BASED ON U.S. CASE 3591/802)
11/10/2000 AUSTRALIA - STORAGE DEVICE (BASED ON U.S. CASE 3591/802)
11/10/2000 BRAZIL - STORAGE DEVICE (BASED ON U.S. CASE 3591/802)
11/10/2000 EPO - STORAGE DEVICE (BASED ON U.S. CASE 3591/802)
11/10/2000 JAPAN - STORAGE DEVICE (BASED ON U.S. CASE 3591/802)
11/10/2000 CANADA - LINEAR BRIDGE SYSTEM FOR CONNECTING PANEL SYSTEMS (BASED ON
11/27/2000 U.S. CASE 3591/868)
12/7/2000 JAPAN - HEIGHT ADJUSTABLE WORKSTATION (OUT OF PCT 3591/1791)
12/7/2000 SINGAPORE - HEIGHT ADJUSTABLE WORKSTATION (OUT OF PCT 3591/1791)
03591 01011
03591 01013
03591 01094 01
03591 01123 01
03591 01151
03591 01168 01
03591 01185
03591 01028 4
03591 01270 1
03591 01281 3
03591 01280 404

RIGHT-TO-USE SEARCH AND OPINION RE "UTILITY CABINET"
4/6/2001 POLE LIGHT -- [INVENTORS TO BE NAMED] -- SERIAL NO --/-,---
REVIEW MAXWELL U.S. PATENT NO. 5,163,733 FOR "SEATING CLUSTER FOR
8/15/2001 AIRPORT WAITING AND SIMILAR AREAS"
STORAGE DEVICE -- JEFFREY E. SCHIEDEGGER AND ERIC CHAN -- SERIAL NO. --/-,
11/1/2001 -- (CONTINUATION OF S.N. 09/572,215 -- 3591/899)
12/12/2001 WORK SURFACE SYSTEM - DIVIVIER ET AL. - SERIAL NO. --/-,---
12/20/2001 JAPAN - ELECTRIFIED WALL PANEL SYSTEM
INVESTIGATE POTENTIAL TRADEMARK AND PATENT INFRINGEMENT REGARDING
4/17/2003 USE OF HERMAN MILLER, INC. AND THE AERON CHAIR
4/17/2003 SADDLECO LLC - MESH BICYCLE SEAT, PATENT AND TRADEMARK ANALYSIS
NIGHTINGALE CORP. - CXO SERIES MESH OFFICE CHAIRS, PATENT AND
3/5/2004 TRADEMARK ANALYSIS.

Exhibit C

Stover, Andrew

From: Perry (Randolph), Natalie
Sent: Tuesday, April 29, 2008 9:30 AM
To: 'Debra Miller'; Rolla, Mark
Cc: Stover, Andrew; Drake (Freitag), Angela
Subject: RE: Request for Herman Miller Data

Attachments: Inactive Patents Herman Miller 4-28-08.xls; Active Patents Herman Miller 4-28-08.xls; Herman Miller - Active Tmks.xls; Herman Miller - Inactive Tmks.xls



Inactive Active Patents Herman Miller -Herman Miller -
nts Herman Millerman Miller 4.Active Tmks.xls...nactive Tmks...

Hi Deb:

Good morning. Attached you will find the reports you requested. Please let me know if you need anything further on this or if you have any questions.

Thank you,

Natalie

Natalie Perry
Client Coordinator
Brinks Hofer Gilson & Lione
NBC Tower, Suite 3600
455 North Cityfront Plaza Drive
Chicago, IL 60611-5599
312.840.3193 - Direct
312.321.4299 - Fax
nperry@brinkshofer.com
www.usebrinks.com

|Please Note: This message is intended for the individual or entity named above and may constitute a privileged and confidential communication. If you are not the intended recipient, please do not read, copy, use, or disclose this message. Please notify the sender by replying to this message, and then delete the message from your system. Thank you.|

-----Original Message-----

From: Rolla, Mark
Sent: Friday, April 25, 2008 1:58 PM
To: 'Debra Miller'
Cc: Stover, Andrew; Perry (Randolph), Natalie; Drake (Freitag), Angela
Subject: RE: Request for Herman Miller Data

Deb,

The Patent report will be handled by Natalie Perry and the Trademark report will be handled by Angela Drake. They should be able to get this data to you early next week. It was nice speaking with you again.

Regards,

Mark

Mark S. Rolla
Director of Intellectual Property Docket Systems Brinks Hofer Gilson & Lione NBC Tower,

Suite 3600
455 North Cityfront Plaza Drive
Chicago, IL 60611-5599
312.321.4270
312.321.4299 F
mrolla@usebrinks.com
www.usebrinks.com

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-----Original Message-----

From: Debra Miller [mailto:Debra_Miller@hermanmiller.com]
Sent: Friday, April 25, 2008 1:16 PM
To: Rolla, Mark
Cc: Stover, Andrew
Subject: Request for Herman Miller Data

Mark:

Thank you for your offer to get this information to me right away.

Attached is a spreadsheet with the requested fields for both Patent and Trademark information. (See both sheets in workbook) I would like to have all data for Herman Miller even if cases are abandoned or expired. Maybe you could run those (the inactive cases) in a separate report. I am most interested in the active files, obviously, but will need all info for my files eventually.

(See attached file: Herman Miller-Brinks Docket Data.xls)

Do not hesitate to contact me with any questions you have. Also please share with me the name of the person who will also be working with you on this in case I need to contact him/her in your absence.

Thank you.

Deb Miller
Legal Assistant
Herman Miller Inc. (loc. 0440)
855 East Main Street
Zeeland, MI 49464-0302
616.654.3358 direct dial
616.654.7218 facsimile
(Embedded image moved to file: pic22704.jpg)Legal Services P Please consider the environment before printing this email.

Active Herman Miller

Docket Number	Status	Country	Application Number	Application Date	Patent Number	Issue Date	Publication No.
11254-26	Unfiled	United States					
11254-27	Pending	United States	60/684,141	5/24/2005			
11254-29	Pending	United States	60/731,100	10/29/2005			
11254-31	Pending	United States	11/326,269	1/4/2006			2006-0247919A1
11254-32	Published	Patent Cooperation Treaty	PCT/US2006/000391	1/4/2006			WO2006/076217
11254-38	Issued	United States	11/588,979	10/27/2006	7,363,227	4/22/2008	2007-0203698A1
11254-39	Published	Patent Cooperation Treaty	PCT/US2006/042491	10/27/2006			WO2007/051056
11254-40	Pending	United States	60/962,695	7/31/2007			
11254-42	Pending	United States	11/810,954	6/7/2007			
3591-1000	Issued	Canada	2319865	6/15/1993	2319865	12/11/2001	2008-29336-A1
3591-1005	Pending	United States	09/771,118	1/26/2001			
3591-1022	Issued	United States	09/742,838	12/20/2000	6,718,717	4/13/2004	
3591-1049	Registered	Brazil	DI6100861-3	4/11/2001	DI6100861-3	7/17/2001	
3591-1051	Registered	France	011806	3/22/2001	011806	8/31/2001	
3591-106	Issued	European Patent Convention	92304403.6	5/15/1992	0517386	2/28/1996	
3591-1060	Issued	United States	09/809,704	3/15/2001	6,582,019	6/24/2003	
3591-1065	Pending	Brazil	PI9914518-9	10/13/1999			
3591-1066	Issued	Canada	2347206	10/13/1999	2347206	6/5/2007	
3591-1071	Pending	India	2001-00525	10/13/1999			
3591-1073	Published	Japan	2000-575397	10/13/1999			2002-527129
3591-1076	Issued	New Zealand	511075	10/13/1999	511075	5/10/2004	1495
3591-1079	Issued	Singapore	200102131-0	10/13/1999	80261	9/30/2003	
3591-1089	Issued	United States	09/855,967	5/15/2001	6,644,749	11/11/2003	
3591-1090	Issued	United States	09/858,050	5/15/2001	6,758,523	7/6/2004	
3591-1092	Issued	United States	09/855,369	5/15/2001	6,955,402	10/18/2005	
3591-1097	Issued	United States	09/843,372	4/26/2001	6,711,871	3/30/2004	
3591-1099	Issued	United States	09/840,774	4/23/2001	6,490,829	12/10/2002	
3591-1100	Issued	United States	09/840,776	4/23/2001	6,497,075	12/24/2002	
3591-1102	Pending	United States	09/835,288	4/13/2001			
3591-1109	Issued	United States	09/859,694	5/17/2001	6,588,842	7/8/2003	
3591-1121	Issued	United States	29/143,541	6/15/2001	D469,206	1/21/2003	
3591-1122	Issued	United States	29/143,604	6/15/2001	D459,513	6/25/2002	
3591-1127	Pending	United States	09/883,092	6/15/2001			
3591-1129	Issued	United States	29/146,912	8/17/2001	D456,160	4/30/2002	
3591-1130	Issued	United States	29/146,913	8/17/2001	D460,870	7/30/2002	
3591-1131	Issued	United States	29/146,914	8/17/2001	D456,164	4/30/2002	
3591-1132	Issued	United States	29/146,911	8/17/2001	D455,571	4/16/2002	

3591-1133	Issued	United States	08/398,855	3/6/1995	5,974,742	11/2/1999	
3591-1134	Issued	United States	07/921,314	7/28/1992	5,394,658	3/7/1995	
3591-1139	Issued	United States	09/918,231	7/30/2001	6,513,222	2/4/2003	
3591-1152	Issued	United States	09/975,244	10/10/2001	6,766,748	7/27/2004	
3591-1154	Issued	United States	09/941,157	8/27/2001	6,769,747	8/3/2004	
3591-1155	Issued	United States	09/975,245	10/10/2001	6,764,144	7/20/2004	
3591-1159	Issued	United States	09/982,600	10/17/2001	6,581,260	6/24/2003	
3591-116	Issued	United States	07/982,705	12/1/1992	5,399,010	3/21/1995	
3591-1166	Issued	United States	09/977,044	10/12/2001	6,732,660	5/11/2004	
3591-117	Issued	United States	08/022,138	2/25/1993	5,511,852	4/30/1996	
3591-1172	Unfiled	United States					
3591-1178	Issued	United States	10/012,572	11/5/2001	6,684,582	2/3/2004	2002-157331-A1
3591-1181	Issued	United States	09/990,579	11/21/2001	6,755,473	6/29/2004	
3591-119	Issued	Canada	2073819-7	7/14/1992	2073819	12/19/1995	
3591-1193	Issued	New Zealand	515698	11/22/2001	515698	7/7/2003	1485
3591-1194	Issued	New Zealand	515699	11/22/2001	515699	9/8/2003	
3591-1195	Issued	New Zealand	515700	11/22/2001	515700	7/7/2003	1485
3591-12	Issued	United States	07/526,064	5/18/1990	5,013,252	5/7/1991	
3591-120	Issued	United States	07/898,899	6/15/1992	D346,279	4/26/1994	
3591-1204	Issued	United States	29/155,591	2/13/2002	D471,370	3/11/2003	
3591-1205	Issued	United States	29/155,590	2/13/2002	D471,042	3/4/2003	
3591-1212	Issued	United States	10/165,337	6/10/2002	6,663,267	12/16/2003	2002-191390-A1
3591-1216	Issued	United States	10/256,125	9/26/2002	6,702,390	3/9/2004	2003-034682-A1
3591-1226	Issued	Mexico	2002/000470	5/3/2002	15918	12/17/2003	
3591-1231	Issued	Canada	2384668	5/30/2002	2384668	3/29/2005	
3591-1239	Registered	Canada	100296	8/9/2002	100296	12/6/2004	
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3591-1241	Registered	Germany	40206846.7	8/13/2002	40206846.7	10/24/2002	
3591-1247	Issued	United States	10/256,671	9/27/2002	6,722,741	4/20/2004	2003-020310-A1
3591-1248	Issued	United States	10/256,988	9/27/2002	6,733,080	5/11/2004	2003-034680-A1
3591-1251	Issued	Great Britain	3006172	8/12/2002	3006172	11/18/2002	
3591-1252	Registered	Germany	40206847.5	8/13/2002	40206847.5	10/24/2002	
3591-1254	Issued	United States	10/262,912	10/2/2002	6,726,286	4/27/2004	2003-034681-A1
3591-1255	Issued	Mexico	2002/000877	6/2/2000	14937	4/10/2003	
3591-1258	Issued	United States	29/169,629	10/23/2002	D489,472	5/4/2004	
3591-126	Issued	Canada	2136967	6/15/1993	2136967	4/3/2001	
3591-1262	Issued	United States	29/169,151	10/15/2002	D494,792	8/24/2004	
3591-1263	Issued	United States	29/169,159	10/15/2002	D490,994	6/8/2004	
3591-1266	Pending	United States	10/278,312	10/23/2002			
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3591-1278	Unfiled	United States					
3591-1282	Published	Patent Cooperation Treaty	PCT/US03/04074	2/12/2003			WO03/068025
3591-1283	Issued	United States	10/365,682	2/12/2003	7,249,802	7/31/2007	2003-0178882A1

3591-1284	Unfiled	United States					
3591-1289	Issued	United States	09/897,153	6/29/2001	6,726,285	4/27/2004	
3591-129	Issued	Taiwan	85201422	9/4/1993	171368	7/26/2001	
3591-1292	Pending	Brazil	PI9307983-4	2/24/2003			
3591-1293	Issued	Brazil	PI9307979-6	6/15/1993	PI9307979-6	6/21/2005	
3591-1295	Pending	Brazil	PI9307981-8	2/24/2003			
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3591-1300	Issued	Germany	40303025.0	4/14/2003	40303025.0	7/22/2003	
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3591-1302	Issued	Mexico	2003/000373	4/15/2003	19226	10/24/2005	
3591-1303	Issued	Canada	102693	4/10/2003	102693	12/6/2004	
3591-1305	Issued	Great Britain	3012179	4/11/2003	3102179	6/4/2003	
3591-1306	Issued	Mexico	2003/000375	4/15/2003	19227	10/24/2005	
3591-1312	Unfiled	United States					
3591-1322	Issued	United States	10/442,368	5/21/2003	6,837,546	1/4/2005	2003-0193229A1
3591-1327	Issued	United States	10/627,354	7/24/2003	7,163,263	1/16/2007	
3591-1347	Pending	United States	10/796,406	3/8/2004			2005-0194829A1
3591-1357	Pending	United States	10/738,641	12/17/2003			2004-0183350A1
3591-1362	Issued	United States	10/772,935	2/5/2004	6,966,604	11/22/2005	
3591-1367	Published	Japan	2004-008220	1/15/2004			2004-121869
3591-1368	Published	Japan	2004-008221	1/15/2004			2004-105771
3591-1369	Published	Japan	2004-008222	1/15/2004			2004-141677
3591-1370	Issued	Australia	2004200186	10/13/1999	2004200186	6/21/2007	
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3591-1374	Pending	United States	10/995,050	11/22/2004			
3591-1377	Pending	United States	10/797,581	3/10/2004			2004-0256524A1
3591-1381	Issued	United States	10/819,471	4/7/2004	7,059,682	6/13/2006	2005-1464-A1
3591-1384	Pending	United States	10/856,130	5/28/2004			2005-0011138A1
3591-1385	Pending	United States	10/853,743	5/25/2004			US2005132408A1
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3591-1389	Pending	Canada	2473978	1/27/2003			
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3591-1390	Published	Mexico	PA/a/2004/00	1/27/2003			
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3591-1400	Published	Germany	10392285.7	2/12/2003			10392285
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3591-1406	Published	Brazil	PI9307991-5	6/15/2004			1910
3591-1408	Pending	United States	10/900,551	7/27/2004			US2005104428A1
3591-1409	Pending	United States	10/972,153	10/22/2004			US2005116526A1
3591-1411	Issued	European Patent Convention	04077596.7	9/20/2004	1491117	1/16/2008	1491117
3591-1412	Published	European Patent Convention	04077605.6	9/20/2004			1486142
3591-1417	Unfiled	United States	?				
3591-142	Issued	United States	07/960,086	10/9/1992	5,362,923	11/8/1994	
3591-1427	Issued	France	98200988.8	6/15/1993	0856269	8/31/2005	
3591-1428	Issued	Germany	98200988.8	6/15/1993	P69333862.8	8/31/2005	0856269
3591-1429	Issued	Great Britain	98200988.8	6/15/1993	0856269	8/31/2005	
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3591-1447	Issued	United States	11/296,118	12/6/2005	7,213,880	5/8/2007	2006-0091714A1
3591-1448	Issued	Great Britain	0515244.2	7/25/2005	2414176	9/13/2006	2414176
3591-1449	Issued	Great Britain	0515248.3	7/25/2005	2414391	9/13/2006	2414391
3591-1450	Issued	Great Britain	0515246.7	7/25/2005	2413954	7/19/2006	2413954
3591-146	Registered	Canada	19-11-92-9	11/19/1992	74023	3/17/1994	
3591-1462	Pending	United States	11/211,173	8/24/2005			2006-0071523A1

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3591-1482	Issued	Great Britain	0608532.8	10/22/2004	2423346	5/7/2008	2423346
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3591-150	Registered	Germany	M9209024.9	11/30/1992	M9209024.9	2/24/1993	
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3591-1502	Unfiled	United States					
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3591-1518	Pending	United States	11/645,234	12/21/2006			2007-0246783A1
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3591-1529	Published	Patent Cooperation Treaty	PCT/IB2007/00721	3/22/2007			WO2007/110729
3591-153	Registered	Spain	0129035	12/14/1992	0129035	7/15/1993	
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3591-1576	Pending	Japan	2007-318816	6/15/1993			
3591-1582	Pending	United States	12/012,002	1/28/2008			
3591-1584	Pending	Patent Cooperation Treaty	PCT/US2008/052208	1/28/2008			
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3591-1600	Pending	China P.R.	20083000197 8.5	3/21/2008			
3591-1601	Pending	European Community Design	000904966	3/20/2008			
3591-1602	Pending	India	n/a	3/20/2008			
3591-1603	Pending	Japan	2008-007022	3/21/2008			
3591-1604	Pending	Mexico	MX/f/2008/000 667	3/24/2008			
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3591-1615	Pending	Canada	N/A	2/12/2003			
3591-1616	Pending	Canada	N/A	5/28/2004			
3591-17	Issued	United States	35,351	4/7/1987	4,876,835	10/31/1989	
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3591-194	Issued	European Patent Convention	93309589.5	12/1/1993	0600719	4/29/1998	
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3591-207	Issued	European Patent Convention	94300577.7	1/26/1994	0614633	10/7/1998	
3591-212	Issued	European Patent Convention	94300399.6	1/19/1994	0611045	9/27/2000	
3591-215	Registered	Australia	4037/93	12/22/1993	124174	7/26/1995	
3591-216	Issued	Mexico	940420	1/12/1994	194606	12/15/1999	
3591-220	Issued	United States	08/482,175	6/7/1995	5,641,203	6/24/1997	
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3591-278	Issued	United States	08/347,475	6/15/1993	6,386,634	5/14/2002	
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3591-354	Registered	Great Britain	2048159	6/13/1995	2048159	10/19/1995	
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3591-459	Issued	United States	29/059,588	9/13/1996	D386,023	11/11/1997	
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3591-54	Issued	France	93915366.4	6/15/1993	0645976	9/1/1999	
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3591-638	Issued	United States	29/123,670	5/22/2000	D449,172	10/16/2001	
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3591-734	Issued	Japan	10-35377	12/7/1998	1062454	11/12/1999	
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3591-736	Registered	Spain	144265	12/4/1998	144265	9/17/1999	
3591-737	Registered	South Korea	98-21140	12/4/1998	246636	8/20/1999	
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3591-739	Issued	Taiwan	87308894	12/4/1998	71365	4/20/2001	
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3591-775	Issued	Mexico	989398	11/9/1998	210548	9/30/2002	
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3591-79	Issued	European Patent Convention	92300417.0	1/17/1992	0495671	1/2/1997	
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3591-869	Issued	United States	09/610,922	7/6/2000	6,487,978	12/3/2002	
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3591-899	Issued	United States	09/572,215	10/11/2001	6,371,035	4/16/2002	2002-0043190A1
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3591-94	Issued	United States	07/812,354	12/20/1991	D341,494	11/23/1993	
3591-949	Issued	New Zealand	504871	5/31/2000	504871	8/6/2002	

3591-952	Issued	Mexico	000759	6/2/2000	14471	11/15/2002	
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3591-998	Issued	Canada	2319881	6/15/1993	2319881	10/30/2001	
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4634-42	Issued	Canada	2124872	6/1/1994	2124872	4/29/1997	
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4635-3	Issued	United States	07/694,280	5/1/1991	D341,737	11/30/1993	
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5280-94	Issued	United States	09/833,311	4/11/2001	6,386,636	5/14/2002	2001-0011840A1
5280-95	Issued	United States	09/833,492	4/11/2001	6,367,876	4/9/2002	2001-0040399A1
5280-96	Issued	United States	09/791,098	2/22/2001	6,393,783	5/28/2002	2001-0029712A1
5280-99	Issued	United States	10/068,801	2/5/2002	6,729,085	5/4/2004	2002-129574-A1

Exhibit D

Stover, Andrew

From: Parker, Kathy
Sent: Thursday, July 17, 2008 12:27 PM
To: 'Debra Miller'
Cc: Stover, Andrew
Subject: Pending & Issued cases for "RESOLVE" /kp

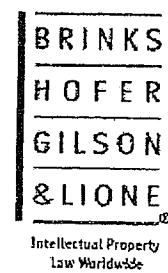
Dear Ms. Miller,

Per our phone conversation this morning, please find a status report for the pending and issued cases for Project Resolve (US & International) on our docketing system. Please contact me if more information is needed. Please accept my apologies for our delay in retrieving this data for you.

Yours truly,
Kathy Parker, on behalf of Drew Stover.

<u>Client/Matter number</u>	<u>Country</u>	<u>Status</u>
3591-548	US	Closed
3591-881	PCT	Completed
3591-1064	Australia	Abandoned
3591-1065	Brazil	Pending
3591-1066	Canada	Issued
3591-1067	China	Abandoned
3591-1068	Costa Rica	Abandoned
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3591-1073	Japan	Published
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3591-1082	United Arab Emirates	Abandoned
3591-1102	US	Abandoned
3591-1370	Australia	Issued

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Exhibit E

Andrew D. Stover
312 321-4713



September 4, 2008

VIA COURIER

John L. Gase, Esq.
Leydig, Voit & Mayer, Ltd.
Two Prudential Plaza – Suite 4900
180 North Stetson Avenue
Chicago, IL 60601-6780

Re: HMI Files

Dear John:

Further in view of our conversation today, please find enclosed various photographs of post cards associated with the 3591-1408 and 4634-129 files transferred to you. As we discussed, the following summarizes our understanding about these items:

1. 3591-1408 (U.S. Applications 10/900,551):

- a. A pink postcard was submitted to the Brinks Hofer Docketing department listing an "Amendment & Req. For Ext. of Time" having a "DATE OF MAILING: 6/17/07." The card contains the initials "WFP," which are the initials for William (Bill) Prendergast.
- b. A return post card referring to the same amendment has a "6/6/07" mailing date.
- c. The return post card has a USPTO date stamp of "JUN 08 2007."
- d. A return post card from a different file (redacted) has the same "date stamp."
- e. There is no record at the USPTO that the Amendment was filed.
- f. A pink postcard was submitted to the Brinks Docketing department listing a "Petition To Withdraw Erroneous Abandonment" having a "DATE OF MAILING: 9/19/07." The card contains the initials "WFP," which are the initials for William (Bill) Prendergast.
- g. A return post card referring to the same Petition has a "8/8/07" mailing date.
- h. The return post card has a USPTO date stamp of "AUG 10 2007."
- i. A return post card from a different file (redacted) has the same "date stamp."

RECEIVED
SEP 5 - 2008
LEYDIG, VOIT & MAYER

John L. Gase, Esq.
Leydig, Voit & Mayer, Ltd.
Re: HMI Files
September 4, 2008
Page 2

j. There is no record at the USPTO that the Petition was filed.

k. A Petition to Withdraw Abandonment was filed May 28, 2008 asserting that the Amendment and first Petition were filed, with the above-referenced return post cards submitted in support of that Petition.

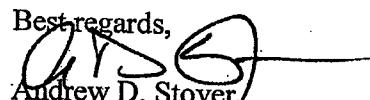
2. 4634-129 (U.S. Applications 09/733,015):

a. A return post card was submitted to the USPTO along with an amendment as evidence that the Amendment was earlier filed. The return post card has a date stamp of "AUG 11 2003."

b. A return post card with an "AUG 11 2003" date stamp cut out and pasted to the underlying card has been located.

As we discussed, we will look into whether any Assignments were recorded against the 3591-1408 case, or its earlier priority cases, and advise. In addition, I will look for the EP case (App. No. 99954147.8 – O/R 3591-1070) in our archives and forward a copy as soon as I can locate it. I note that our docket system indicates that it was abandoned by non-payment of the 8th annuity due October 31, 2006 per an authorization worksheet from HMI dated August 11, 2006. Please contact me or John Lucas, in-house counsel for Brinks Hofer Gilson & Lione, if you have any further questions about these matters.

Best regards,



Andrew D. Stover

ADS/
Enclosures

cc: Jim Christenson, Esq. (via facsimile) (both without enclosures)
John Lucas, Esq.

Serial No.
Applicant:
Client/Inter No.: [REDACTED]
Correspondence for PARENT:
P.O. Box 1450
Alexandria, VA 22313-1450

Please acknowledge receipt of ITC below identified:
Item Mailed: [REDACTED]

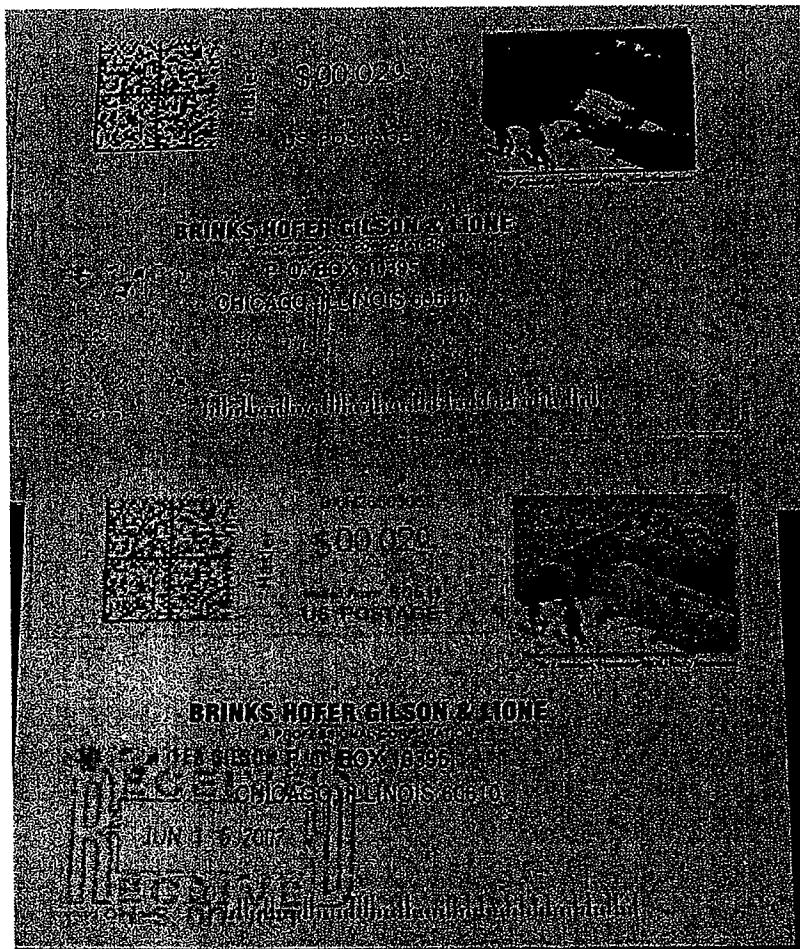
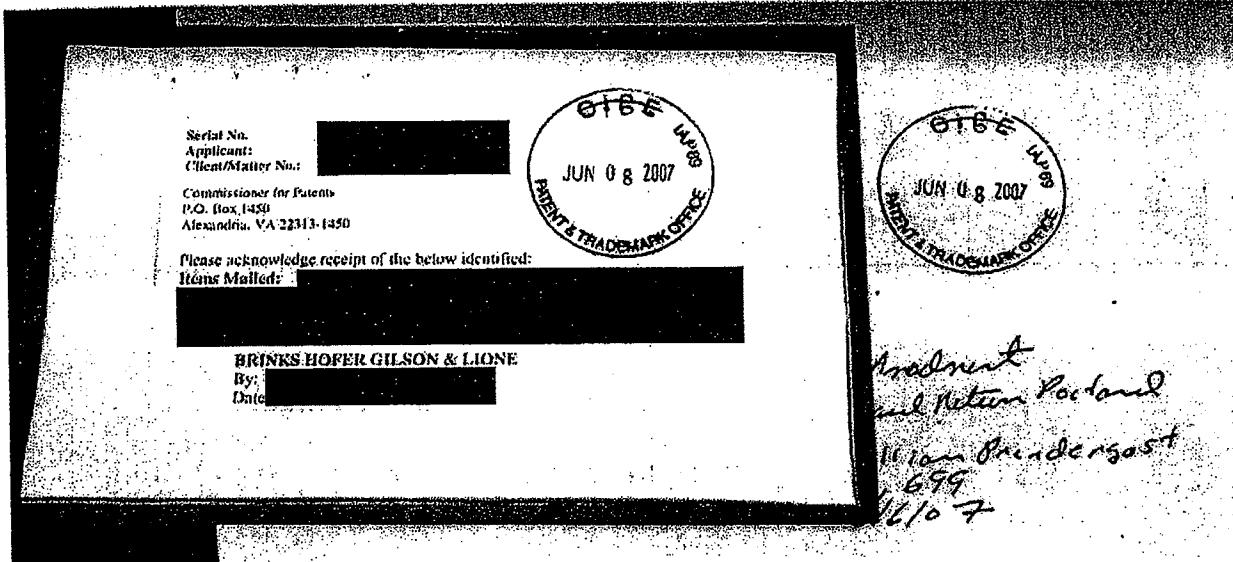
BRINKS-HOFER GILSON & LIONE
By: [REDACTED]
Date: [REDACTED]

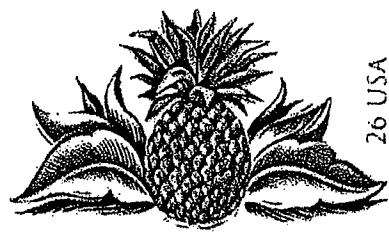


Serial No. 09/900,551
Attn: Wallen, Q
Correspondence
P.O. Box 1450
Alexandria, VA 22313-1450



BRINKS-HOFER GILSON & LIONE
PROFESSIONAL CORPORATION
P.O. BOX 1450
CHICAGO, ILLINOIS 60610

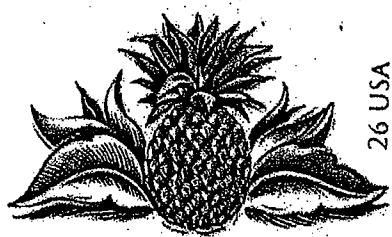




26 USA

BRINKS HOFER GILSON & LIONE
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P. O. BOX 10395
CHICAGO, ILLINOIS 60610

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BRINKS HOFER GILSON & LIONE
A PROFESSIONAL CORPORATION
P. O. BOX 10395
CHICAGO, ILLINOIS 60610

Serial No. 10/180,551
Applicant: Wallenda, L.

Comr. for Patents
P.O. Box 1450
Alexandria, VA 22313

Trans. Mailed: Rec'd. to Withdrawn Endorsements
Abingdon et al. with Amendmt
of 6/6/67
Wm. H. am. Bendergast
346,699
8/18/67

Serial No.
Applicant Name:
Comr. for Patents
P.O. Box 1450
Alexandria, VA 22313-1519

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BRINKS HOFER GILSON & LIONE

By Date _____

Serial No. 10/180,551
Applicant: Wallenda, L.

Comr. for Patents
P.O. Box 1450
Alexandria, VA 22313

Trans. Mailed: Rec'd. to Withdrawn Endorsements
Abingdon et al. with Amendmt
of 6/6/67
William Bendergast
346,699
8/18/67



BRINKS HOFER GILSON & LIONE
A PROFESSIONAL CORPORATION
P. O. BOX 10385
CHICAGO, ILLINOIS 60610

Serial No. 10/1900,551
Applicant: Waller et al.

Comm For Patents

P. O. Box 1450
Alexandria, VA 22313

Items Mailed: Pet. To Withdraw Endorsement
Abandonment et al. with Amendment
of 6/6/07

William Prendergast
34,699
8/18/07

Serial No.: [REDACTED]
Applicant: [REDACTED]
Client/Matter No.: [REDACTED]
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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BRINKS HOFER GILSON & LIONE
By: [REDACTED]
Date: [REDACTED]